



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/173470

PRELIMINARY RECITALS

Pursuant to a petition filed April 6, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Qualified Medicare Benefits (QMB) assistance programs under Medical Assistance, a hearing was held on April 28, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner and her husband's Qualified Medicare Beneficiary premium payments effective January 1, 2016, due to income in excess of program limits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Worker
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. The petitioner has been continuously eligible for BadgerCare Plus (BC+) coverage since July 1, 2014. Her husband, [REDACTED], was eligible for Qualified Medicare Beneficiary (QMB) coverage from July 1 – December 31, 2015, and also eligible for BadgerCare Plus (BC+) from July 1, 2015, to the present. See, Exhibits #11 & #12, ForwardHealth screens run on 4/28/16.

2. In the period prior to December 1, 2015, the couple's gross countable income for MA was \$1,307.85, and after the \$20 disregard, it was net income of \$1,287.85. See, Exhibit #5, p.1, SSI-Related Medicaid Budget run on 10/0/2015. The net income limit for QMB program benefits was \$1,327.50, and [REDACTED] was receiving QMB benefits.
3. On November 30, 2015, the Department issued a written Notice to the petitioner informing her that [REDACTED] was not eligible for Medicare Premium Assistance under the Qualified Medicare Beneficiary program, effective January 1, 2016, because household income is too high. [REDACTED]'s income was counted as \$515 of Social Security benefits, and [REDACTED]'s income was counted as \$60.85 of child support, plus \$784 of Social Security benefits. These sums totaled \$1,359.85, and after the \$20 disregard, net income was \$1,339.85. This exceeded the same QMB income limit. See, Exhibit #10; and see, Exhibit #5, at p. 2.
4. On January 8, 2016, the Department issued a Notice stating that effective February, 2016, [REDACTED] would begin receiving premium benefits paid under the Specified Low Income Medicare Beneficiary (SLMB) program. See, Exhibit #8, at p. 3 of 9.
5. On January 11, 2016, the agency discovered that the petitioner's daughter, [REDACTED], had reported in her own separate welfare benefits case that she was paying rent of \$400 per month to her parents (the petitioners here) as an expense. See, Exhibit #4, at p.2, entry for 1/11/16.
6. On January 12, 2016, the Department issued a verification request letter to the petitioner asking her to verify "other" income sources.
7. On January 18, 2016, the Department issued a Notice to the petitioner informing her that effective February 1, 2016, the petitioner and her husband were not eligible for SLMB benefits due to income in excess of program limits.
8. On February 8, 2016, the Department sent an additional Notice again informing the petitioner that she, and [REDACTED] had been determined to be not eligible for SLMB premium benefits, effective February 1, 2016, due to income in excess of program limits. [REDACTED]'s income was counted as \$515 of Social Security benefits, and [REDACTED]'s income was counted as \$60.85 of child support, plus \$784 of Social Security benefits, plus \$400 in rental income. These sums totaled \$1,759.85, and after the \$20 disregard, net income was \$1,739.85. This exceeded the SLMB income limit of \$1,593. See, Exhibit #8, attached Notice of 2/8/16.
9. On February 12, 2016, the caseworker found in the Electronic Case File a letter from the petitioner that verified that she was receiving \$400 per month of rent from an adult child who was residing with the couple, i.e., their daughter, [REDACTED]. See, Exhibit #4, at p. 2, at entry for February 12, 2016.
10. On February 15, 2016, the Department sent another Notice informing the petitioner that she, and [REDACTED] had been determined to be not eligible for SLMB premium benefits, effective March 1, 2016, due to income in excess of program limits. [REDACTED]'s income was counted as \$515 of Social Security benefits, and [REDACTED]'s income was counted as \$60.85 of child support, plus \$784 of Social Security benefits, plus \$400 in rental income. These sums totaled \$1,759.85, and after the \$20 disregard, net income was \$1,739.85. This exceeded the SLMB income limit of \$1,593.
11. On March 9, 2016, a Notice similar to those described in Findings #8 & #10 was issued denying SLMB benefits to [REDACTED] and [REDACTED] effective April, 2016, due to (the same) income amount in excess of SLMB program limits.
12. On April 6, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the discontinuance of [REDACTED]'s QMB premium payment by the Department of Health Services, stating " Please help us. We can't pay that amount every month out of his paycheck." See, Request for Fair Hearing, p. 2.

13. On April 7, 2016, a Notice similar to those described in Findings #8, #10 & #12, was issued denying SLMB benefits to [REDACTED] and [REDACTED] effective May, 2016, due to (the same) income amount in excess of SLMB program limits.

DISCUSSION

Medicare is the health insurance program administered by the federal Centers for Medicare & Medicaid Services (CMS) for people over 65 and for certain younger disabled people. Medicare is divided into two types of health coverage. Hospitalization Insurance (Part A) pays hospital bills and certain skilled nursing facility expenses. Medical Insurance (Part B) pays doctors' bills and certain other charges.

Medicare, being an insurance program, charges premiums. Wisconsin *Medical Assistance* (MA) pays some or all Medicare premiums for eligible persons through the subprograms described below:

1. Qualified Medicare Beneficiary (QMB).
2. Specified Low-Income Medicare Beneficiary (SLMB).
3. Specified Low-Income Medicare Beneficiary Plus (SLMB+), also known as Qualifying Individuals – 1 (QI-1).
4. Qualified Disabled and Working Individuals (QDWI).

Medicaid Eligibility Handbook, App. 32.1.1. Subprograms 1 through 4 are collectively referred to as Medicare Premium Assistance programs.

The then-applicable income limit, in January, 2016, for QMB was up to 100% of the federal poverty level. For SLMB the limit was from 100% to 119%, and for SLMB+ it was 120% to 134% of the federal poverty level. *MEH*, Apps. 32.2 – 32.5. And see, *MEH*, App. 39.5. You must be working and qualified disabled for QDWI, and neither is relevant here.

At the time of the budget testing, 100% of the federal poverty level for a two person husband and wife household was \$1,327.50, 120% was \$1,593, 135% was \$1,792.13, and 200% was \$2,655. *Id.*, App. 39.5.

However, an individual receiving BadgerCare Plus cannot receive SLMB+ benefits, regardless of income. See, *Medicaid Eligibility Handbook*, at § 32.4.1. Here, both petitioner and spouse were receiving BadgerCare Plus continuously in 2016, since at least January 1, 2016. See, Exhibits #11 & #12.

I have reviewed the record very carefully. First, an appeal contesting the discontinuance or denial of Medical Assistance benefits, like the discontinuance or denial of QMB benefits, must be filed within 45 days of the effective date of the negative action. Wis.Stat. § 49.45(5). Here, the first notice of discontinuance was issued on November 30, 2015, and effective on January 1, 2016. Further the petitioner cites to this effective date in her appeal request. See, Request for Fair Hearing, dated 4/6/16.

Accordingly, this appeal was filed on April 6, 2016, That is 86 days after the effective date for January, 2016, and her appeal is untimely as to January. 2016. I therefore do not reach the merits on that month.

Second, their appeal as to the denial of February, 2016, QMB benefits is also untimely because a second notice dated January 18, 2016, informed the couple that the agency denied their SLMB benefits effective February 1, 2016. This notice was then followed by notices of February 8, 2016, saying the denial action stood as to February, 2016, SLMB benefits, and again on February 15, 2016, pertaining to a denial of SLMB for March, 2016, due to the same income calculation. Thus, as to the February, 2016, SLMB

denial, that action was taken on January 18, 2016, and effective February 1, 2016. The appeal was filed, as above, on April 6, 2016, which was 65 days after the effective date of the February, 2016, negative action, and also untimely filed.

Third, the appeal is clearly timely as to the repeated denials of SLMB benefits for March, 2016. It is clear, however, that as of March, 2016, both husband and wife were receiving BC+, and had net countable income of \$1,739.85. This exceeded the SLMB income limit of \$1,593, so they were not eligible for QMB or SLMB as of March, 2016, or after. And, while *SLMB+* has a higher income limit, they were not eligible for SLMB+ due to their ongoing eligibility for BC+. An individual cannot get SLMB+ benefits if receiving BadgerCare Plus, as both were. *Medicaid Eligibility Handbook*, at § 32.4.1. They were not eligible for any type of premium benefit in March, April or May-to-date, in 2016.

In conclusion, the appeal as the QMB premiums for January & February, 2016, is untimely; the agency correctly determined that the household's income exceeds the QMB and SLMB income limits in March – May, 2016, including the \$400 rent payments from [REDACTED]; and both individuals were ineligible for SLMB+ due to the receipt of BC+, which makes them ineligible for SLMB+.

As a side-note to the petitioner, if [REDACTED] has moved out and is no longer paying them rent, the petitioner should report and verify this to the agency as it may enable the couple to once again receive the QMB or SLMB premiums in future months. That is their responsibility to report and request.

CONCLUSIONS OF LAW

- 1) That the petition for review as it concerns QMB premiums discontinued for January and February, 2016, is untimely.
- 2) That the petition for review as it concerns QMB premiums discontinued for March – May, 2016, is timely.
- 3) That the Department correctly denied the petitioner's husband and wife QMB and SLMB benefits for March, April and May, 2016, because their income exceeded both income limits; and further correctly denied all SLMB+ benefits at all times since January 1, 2016, because petitioner and her husband were each eligible at all times since January 1, 2016, eligible for BadgerCare Plus and not eligible for SLMB+ because of that status.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

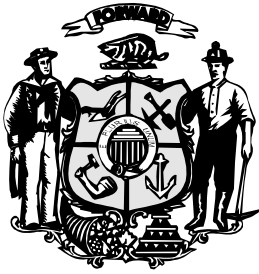
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of May, 2016

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 3, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability